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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/046,657	01/16/2002	William Dawson	U 013830-8	1050

7590 06/12/2003

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EXAMINER

LEVY, NEIL S

ART UNIT	PAPER NUMBER
1616	7

DATE MAILED: 06/12/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

10	Application N 04657	Applicant(s) Dawson
Examiner MBL Guy	Group Art Unit 101	9

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication .
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

### Status

Responsive to communication(s) filed on 5/6/03

This action is **FINAL**.

Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

### Disposition of Claims

Claim(s) 1 - 36 is/are pending in the application.

Of the above claim(s) 7-9, 16 - 36 is/are withdrawn from consideration.

Claim(s) \_\_\_\_\_ is/are allowed.

Claim(s) 16, 10 - 15 is/are rejected.

Claim(s) \_\_\_\_\_ is/are objected to.

Claim(s) 1 - 36 are subject to restriction or election requirement.

### Application Papers

See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

The proposed drawing correction, filed on \_\_\_\_\_ is  approved  disapproved.

The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

The specification is objected to by the Examiner.

The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. § 119 (a)-(d)

Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

All  Some\*  None of the CERTIFIED copies of the priority documents have been received.

received in Application No. (Series Code/Serial Number) \_\_\_\_\_

received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

### Attachment(s)

Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_  Interview Summary, PTO-413

Notice of Reference(s) Cited, PTO-892  Notice of Informal Patent Application, PTO-152

Notice of Draftsperson's Patent Drawing Review, PTO-948  Other \_\_\_\_\_

## Office Action Summary

Art Unit: 1616

Applicant's election of group I, species of claim 13, corncobs in Paper No. 8 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

Claims 7-9, 16-36 stand withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected inventions, there being no allowable generic or linking claim. Election was made **without** traverse in Paper No. 8.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-6, 10-15 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Henshaw-WO 97/555470.

The instant method, although not stated as such, is demonstrated, thus known. Water retentive, or any other material (p.6, lines 27-40) is shown to be tested as non-toxic rodenticide (p.3, lines 26-30) requiring ad lib feeding under lab conditions and performing clinical evaluation (p.3-6) to compare forced dosing with ad lib dosing-over 20% weight loss in derived ~~Rattus~~ norvegicus animals was evident at day 3, but weight loss was seen daily, so, at death, at days 4-7, over 30% weight loss by extrapolation would have been observed, but was not reported; death being a satisfactorily acceptable ~~end~~ point for determining effects of a presumed candidate rodenticidal material. The material used included cellulosics, corn cobs (p.3, lines 1-5). Clinicals included examination for dehydration, ~~imparting~~ weight loss (p.6, lines 1-8). The materials tested were non-toxic to human (p.1, lines 31-33), and were tested for non toxicity (p.3, line 26-p.5, line 8). It is not clear if post mortems were done, however, one of ordinary skill in the art of toxicity testing would perform post mortems on some control, all animals dying during a toxicity study.

*Hg 10-15 are*  
Claim<sup>\*\*\*</sup> rejected under 35 U.S.C. 103(a) as being unpatentable over Takashi and Henshaw in view of NCI '76.

Takashi shows selection of non-polluting rodent control by testing and analyzing effects on rats of various materials (abstract) including Neropsy.

Henshaw (above) also tested for non-target species non toxic material, toxic to rats, and finds as does Takashi, cellulosic water retentive materials to be effective. Clearly, any amount of testing may be done, both authors performing clinical evaluations, while Takashi also performs Necropsy. It would have been obvious to one

of ordinary skill in the art of toxicity testing at the time of the instant invention, to perform clinical and post mortem evaluations of test subjects treated with potential Rodenticides, ~~to the extent of expertise, time and money available, the tests normally done are well documented in the prior art, as for example, the NCI protocol. This Protocol includes the acute and subacute evaluations (appendix E) inclusive of gross necropsy finding (p.56, A.) Acute studies emphasis need for clinical observations, including weight, (p.11, 12) and subacute (sub chronic-p.13).~~

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Neil Levy whose telephone number is 308-2412. The examiner can normally be reached on Tuesday- Friday 7:00 am to 5:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jose Dees can be reached on 308-4628. The fax phone numbers for the organization where this application or proceeding is assigned are 308-4556 for regular communications and 872-9307 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 308-1235.

Levy/tgd  
June 4, 2003



NEIL S. LEVY  
PRIMARY EXAMINER